


TD 1999/D83 - Income tax: capital gains: if marriage breakdown roll-over applies to a transfer of a CGT asset between spouses, what expenses of the transferor become the first element of the transferee's cost base of the asset under paragraph 126-5(5)(a) of the Income Tax Assessment Act 1997?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D83 - Income tax: capital gains: if marriage breakdown roll-over applies to a transfer of a CGT asset between spouses, what expenses of the transferor become the first element of the transferee's cost base of the asset under paragraph 126-5(5)(a) of the Income Tax Assessment Act 1997?*

This document has been finalised by TD 1999/57.

Draft Taxation Determination

Income tax: capital gains: if marriage breakdown roll-over applies to a transfer of a CGT asset between spouses, what expenses of the transferor become the first element of the transferee's cost base of the asset under paragraph 126-5(5)(a) of the *Income Tax Assessment Act 1997*?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. Expenditure incurred by a transferor arising from a marriage breakdown property settlement can be included in the first element of the transferee's cost base to the extent of the costs of transfer (conveyancing fees, stamp duty, etc).
2. The transferor's general legal costs of the marriage breakdown property settlement do not satisfy the cost base rules in Division 110 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Note 1

3. The transferor's costs of transfer that satisfy the cost base rules in Division 110 of the ITAA 1997 must be apportioned on a reasonable basis over all CGT assets involved in the property settlement, namely, all CGT assets transferred and all CGT assets retained by the transferor.

Note 2

4. Under subsection 126-5(5) of the ITAA 1997, if a CGT asset is transferred between spouses because of a court order under the *Family Law Act 1975*, the first element of the asset's cost base in the hands of the transferee is the asset's cost base in the hands of the transferor at the time the transferee acquired it. The first element of the asset's reduced cost base (if applicable) is calculated similarly.

Your comments

5. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by date: 15 September 1999
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Commissioner of Taxation

18 August 1999

Subject references:

asset; CGT asset; CGT event; cost base; first element; marriage breakdown; property; property settlement; reduced cost base; spouse; roll-over; transfer; transferee; transferor

Legislative references:

ITAA 1997 126-5(5); ITAA 1997 126-5(5)(a); ITAA 1997 Div 110

ATO references:

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